

MICHAEL G. FITZPATRICK  
8TH DISTRICT, PENNSYLVANIA

COMMITTEE:  
FINANCIAL SERVICES

SUBCOMMITTEES:  
OVERSIGHT AND INVESTIGATIONS  
VICE CHAIRMAN

CAPITAL MARKETS, INSURANCE AND  
GOVERNMENT SPONSORED ENTERPRISES



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-3808

WASHINGTON OFFICE:  
1224 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-4276  
FAX: (202) 225-9511

DISTRICT OFFICE:  
1717 LANGHORNE NEWTOWN ROAD, SUITE 400  
LANGHORNE, PA 19047  
(215) 579-8102  
FAX: (215) 579-8109

July 12, 2012

The Honorable Julius Genachowski, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

*WFB*  
*Sitting*  
*9/16*

**Dear Chairman Genachowski:**

I write to express my concern with the worldwide American Tower Corporation (ATC) installing 60 Distributed Antenna System (DAS) units mounted on high poles on residential properties throughout Northhampton Township, in my Congressional district, the 8<sup>th</sup> District of Pennsylvania. The FCC has a significant opportunity to reinforce the importance of local control over arbitrary national and global influence.

As you know, the 1996 Federal Telecommunications Act (TCA) allows cellular towers to be regulated by local zoning ordinances. Clearly, these DAS units, which are mounted at the top of 25 to 50-foot poles for the purpose of providing wireless communications services, are cell towers. Thus, ATC should abide by township regulations regarding the installation of the DAS units. Northhampton Township zoning ordinances prohibit the placement of cell towers within 300 feet of a private residence.


Additionally, ATC argues that since it has been classified as a public utility by the Pennsylvania Public Utility Commission, it complies with the Northampton Township right-of-way management ordinance, which allows for utilities to be placed along public streets and other areas. However, ATC's classification as a "public utility" does not change the fact that ATC is a telecommunications infrastructure provider, and thus is not exempt from abiding by local ordinances. In fact, the TCA limits local government regulation of telecommunications companies only if a "significant gap" in wireless service exists, and also if installing these cell towers are the least intrusive means of filling that gap. ATC has neither demonstrated that a significant gap in service exists in Northampton Township nor that the wireless needs of residents thereof are not being met. As for the latter TCA standard, the citizens' concerns regarding the potential health, environmental and economic impacts of these cell towers severely call into question whether this is the least intrusive means of providing efficient wireless service to Northampton Township.

Therefore, I respectfully request that the FCC exercise its authority under the TCA to regulate DAS unit poles as cell towers. I also ask that the FCC support local regulation of tower placement when it is in accordance with federal law.

24 JUL 2012 RCUD

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Fitzpatrick", with a stylized flourish at the end.

Michael G. Fitzpatrick  
MEMBER OF CONGRESS



FEDERAL COMMUNICATIONS COMMISSION

September 21, 2012

JULIUS GENACHOWSKI  
CHAIRMAN

The Honorable Michael G. Fitzpatrick  
U.S. House of Representatives  
1224 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Fitzpatrick:

Thank you for your letter expressing concerns regarding Distributed Antenna System units on residential properties in your Congressional district. I appreciate your bringing this matter to my attention and have directed the Senior Deputy Chief of the Wireless Telecommunications Bureau to respond. I am pleased to provide the enclosed letter addressing your concerns and to note that the parties appear to have resolved their legal dispute.

If you have any additional questions or need any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. Genachowski", is written over the word "Sincerely," and extends across the line.

Julius Genachowski

Enclosure



Federal Communications Commission  
Washington, D.C. 20554

September 21, 2012

The Honorable Michael Fitzpatrick  
United States House of Representatives  
1224 Longworth House Office Building  
Washington, DC 20515

Dear Representative Fitzpatrick:

Thank you for conveying your concerns about the Distributed Antenna System (DAS) proposed by American Tower Corporation (ATC) on poles on residential properties throughout Northampton Township, in your Congressional district, the 8<sup>th</sup> District of Pennsylvania. You state that these DAS units, which are mounted at the top of 25 to 50 foot poles for the purpose of providing wireless communications services, are cell towers. Thus, ATC should abide by township regulations regarding the installation of cell towers, which include zoning ordinances that prohibit the placement of cell towers within 300 feet of a private residence.

Pursuant to Section 332(c)(7) of the Communications Act of 1934 (Communications Act), the regulation of the siting and construction of personal wireless service facilities is reserved largely to state and local governments, provided they comply with some basic limitations set forth in the statute. Specifically, regulation of these facilities may not unreasonably discriminate among providers of functionally equivalent services and may not have the effect of prohibiting the provision of service. In addition, a state or local government must act on a request to place, construct, or modify personal wireless service facilities within a reasonable time, and any denial of a request must be made in writing and supported by substantial evidence contained in a written record. A state or local government also may not regulate the placement, construction, or modification of these facilities on the basis of the environmental effects of radio frequency (RF) emissions, to the extent the facilities comply with the Commission's regulations concerning such emissions.

It appears, however, that the legal dispute between ATC, Northampton Township, and other interested parties may involve purported restrictions on local authority imposed under Pennsylvania state law regarding the regulation of the rights of way. The Commission does not generally address issues involving state or local rights of way or the proper interpretation of state and local laws.

We also note that, according to recent public reports, ATC, the township, and other interested parties appear to have resolved their legal dispute, and have agreed that ATC will relocate its DAS system onto public rights-of-way where there are existing utility lines and utility poles instead of placing poles in residential neighborhoods that use all underground utilities.

The Honorable Micahel Fitzpatrick

2.

I appreciate the opportunity to hear your concerns about this matter. Please let me know if I can be of any further assistance. For more information about other siting issues, please visit the Commission's web site at <http://www.fcc.gov/wtb/siting> or contact Don Johnson at 202-418-7444.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. D. Schlichting", with a large, stylized initial "J" and "D".

James D. Schlichting  
Senior Deputy Chief  
Wireless Telecommunications Bureau